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SENATE

{ REPORT
No. 91-1044

CAPT. MELVIN A. KAYE

JULY 30, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1453]

The Committee on the Judiciary, to which was referred the bill (H.R. 1453) for the relief of Capt. Melvin A. Kaye, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay Capt. Melvin A. Kaye, U.S. Air Force, \$3,628.22 in full settlement of his claims against the United States arising out of the destruction of his household goods while being shipped at Government expense from Philadelphia, Pa., to Selfridge Air Force Base, Mich., in connection with his assignment to that base.

STATEMENT

In its favorable report on the bill, the House Judiciary Committee relates the facts in the case as follows:

The Department of the Air Force in its report to the committee on the bill indicated it would have no objection to the bill with the amendment recommended by the committee providing for a payment of \$3,628.22.

Pursuant to permanent change of station orders, Captain Kaye's household goods and other personal and professional equipment, weighing 4,220 pounds, were inventoried, packed, and shipped via the Shamrock Van Lines, from Philadelphia,

Pa., to Selfridge Air Force Base, Mich. On August 1, 1967 (the bill alleges August 1, 1968, an obvious error), most of this property was destroyed by fire in the carrier's truck. The fire occurred near Houghton Lake, Mich., while the goods were in transit.

On September 7, 1967, the Transport Insurance Co., Dallas, Tex., on behalf of the carrier, Shamrock Van Lines, paid \$2,375 to Capt. Melvin A. Kaye and Bonnie G. Kaye, individually and as husband and wife.

On November 21, 1967, Captain Kaye presented a claim to the Air Force in the amount of \$23,206.84. This represented the full amount of his original claim, and did not include depreciation or take into account the \$2,375.00 already recovered. This claim was adjudicated under sections 240-242 of title 31, United States Code, which provide that the claim be evaluated as to what is reasonable, useful, and proper under the circumstances, and that a reasonable depreciation be applied to items which deteriorate through use. In addition, maximum amounts are payable on certain prescribed categories of items such as silver, hobby equipment, and personal memorabilia. Also excluded are claims for items of professional dental equipment not required for military use. Based upon the limitations mentioned above, and taking into account the depreciated value, it was determined that the value of the property was \$16,003.22 at the time of the loss. On May 20, 1968, the Air Force paid Captain Kaye \$10,000, the maximum amount the Air Force could pay under sections 240-242 of title 31, United States Code. That amount, when added to the \$2,375.00 recovered from Shamrock Van Lines, gave him a total recovery of \$12,375.00. When his total recovery is subtracted from the \$16,003.22 which the Air Force has determined is reasonable, useful, and proper under the circumstances, his total unpaid claim—in excess of the amounts recovered thus far—is \$3,628.22.

In its report to the committee, the Department of the Air Force pointed out that the unpaid balance of the loss which Captain Kaye suffered is \$3,628.22 and but for the \$10,000 limitation in the statute, he would have been paid that amount. This was a case where the Government had accepted responsibility for the transportation of Captain Kaye's household goods and personal effects. As noted by the Air Force, the legislative history of the Military Personnel and Civilian Employees Claims Act of 1964 included a recognition of the Government's responsibility for the payment of personal property losses suffered by military personnel and civilian employees incident to their employment. The committee agrees that it is unfair to impose this type of additional burden on a serviceman for personal losses of his property when it is suffered as the result of a man's service obligations in a move directed and controlled by the Government.

Over the years the committee on numerous occasions has considered bills of this type. Often in the course of these con-

siderations the question of whether private insurance is available has been raised. The Air Force report makes a specific reference to this consideration when it is pointed out that it is Air Force policy to encourage the owners of household goods to insure their property through a commercial insurance company. When the Military Personnel and Civilian Employees Claims Act was amended in 1965, the recommending Senate report on the legislation [S. Rept. 655, 89th Cong., first sess.] stated:

"* * * that a requirement for the purchase of insurance has the practical effect of imposing additional costs and hardships on personnel incident to their repeated service-directed moves. It must also be recognized that the cheap 'trip transit' policies offer very little if any protection."

As has been noted in previous instances the contracts made by the Government for transportation of household effects provide for a limited liability on the part of the shipper. This arrangement is made to save money for the Government by providing for lesser charges for the moving. This, of course, means that the serviceman or employee is severely limited in any recovery he can make from the shipper who had control over his property at the time of loss. The committee has therefore concluded that legislative relief is appropriate in the reduced amount recommended by the Air Force, and it is recommended that the amended bill be considered favorably.

The committee, after a review of the foregoing, concurs in the action taken by the House of Representatives and recommends favorable consideration of H.R. 1453.

Attached hereto and made a part hereof is a letter from the Department of the Air Force dated October 10, 1968:

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, October 10, 1968.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 18954, 90th Congress, a bill for the relief of Capt. Melvin A. Kaye.

The purpose of H.R. 18954 is to direct the Secretary of the Treasury to pay Capt. Melvin A. Kaye (U.S. Air Force, FV 3166742), of Selfridge Air Force Base, Mich., the sum of \$10,831.84, in full settlement of all of his claims against the United States arising out of the destruction of his household goods.

Pursuant to permanent change of station orders, Captain Kaye's household goods and other personal and professional equipment, weighing 4,220 pounds, were inventoried, packed, and shipped via the Shamrock Van Lines, from Philadelphia, Pa., to Selfridge Air Force Base, Mich. On August 1, 1967 (the bill alleges August 1, 1968,

an obvious error), most of his property was destroyed by fire in the carriers' truck. The fire occurred near Houghton Lake, Mich., while the goods were in transit.

On September 7, 1967, the Transport Insurance Co., Dallas, Tex., on behalf of the carrier, Shamrock Van Lines, paid \$2,375.00 to Capt. Melvin A. Kaye and Bonnie G. Kaye, individually and as husband and wife.

On November 21, 1967, Captain Kaye presented a claim to the Air Force in the amount of \$23,206.84. This represented the full amount of his original claim, and did not include depreciation or take into account the \$2,375 already recovered. This claim was adjudicated under sections 240-242 of title 31, United States Code, which provide that the claim be evaluated as to what is reasonable, useful, and proper under the circumstances, and that a reasonable depreciation be applied to items which deteriorate through use. In addition, maximum amounts are payable on certain prescribed categories of items such as silver, hobby equipment, and personal memorabilia. Also excluded are claims for items of professional dental equipment not required for military use. Based upon the limitations mentioned above, and taking into account the depreciated value, it was determined that the value of the property was \$16,003.22 at the time of the loss. On May 20, 1968, the Air Force paid Captain Kaye \$10,000, the maximum amount the Air Force could pay under sections 240-242 of title 31, United States Code. That amount, when added to the \$2,375 recovered from Shamrock Van Lines, gave him a total recovery of \$12,375. When his total recovery is subtracted from the \$16,003.22 which the Air Force has determined is reasonable, useful, and proper under the circumstances, his total unpaid claim—in excess of the amounts recovered thus far—is \$3,628.22.

The Air Force concedes that but for the \$10,000 limitation imposed by sections 240-242 of title 31, United States Code, Captain Kaye should be entitled to the additional \$3,628.22. The Government had accepted responsibility for the transportation of Captain Kaye's household goods and personal effects. In addition, the legislative background of this provision indicated that, once it has been determined that the claim is reasonable under the circumstances, then it is only just that Congress assume the responsibility of paying for such losses. (See S. Rept. 655, 89th Cong., first sess., to accompany H.R. 5024 which became Public Law 89-185). It is unfair to impose the additional burden of personal loss when in truth the loss is suffered as a result of the man's service obligations in a move directed and controlled by the Government.

It should be mentioned that Air Force policy is to encourage the owner of the household goods to insure his property through a commercial insurance company. However, as was pointed out in the aforementioned Senate report, that committee recognized "that a requirement for the purchase of insurance has the practical effect of imposing additional costs and hardships on personnel incident to their repeated service-directed moves. It must also be recognized that the cheap 'trip transit' policies offer very little if any protection."

In view of the foregoing, the Air Force interposes no objection to the enactment of H.R. 18954 if amended to reflect the amount of \$3,628.22.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

ROBERT D. BENSON,
Deputy Assistant Secretary of the Air Force
(For and in the absence of Thomas H. Nielsen,
Assistant Secretary of the Air Force).

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